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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 **Elijah Behringer,**

12 Plaintiff,

13 v.  
14

15 **Board of Trustees of**  
16 **the California State University,** (sued  
17 erroneously as **California Polytechnic**  
18 **State University, San Luis Obispo);**  
19 Cal Poly President **Jeffrey Armstrong,**  
20 in his official and individual capacity;  
21 Cal Poly Administrator **Tina Hadaway-**  
22 **Mellis,** in her official and individual  
23 capacity;  
24 Cal Poly Administrator **Valla Hardy,** in  
25 her official and individual capacity;  
26 Cal Poly Administrator **Amy Gode,** in  
27 her official and individual capacity;  
28 The **County of San Luis Obispo** (sued  
erroneously as **San Luis Obispo County**);  
County Health Officer **Penny**  
**Borenstein,** in her official and individual  
capacity;  
Defendants.

**Case No. 5:23-cv-00934-JFW(SK)**

**NOTICE OF APPEAL**

**Judges:** District Judge Hon. John F. Walter,  
Magistrate Judge Hon. Steve Kim

**Court Appealing From:** Western Division  
of the Central District of California, 350 W.  
1st Street, Los Angeles, CA 90012

**Court Appealing To:** United States Court  
of Appeals for the Ninth Circuit

**Orders and Judgment Appealed:** See  
docket entries (Dkt.) 38, 39, and 43.

1 **TO THE COURT**—TAKE NOTICE that in the matter concerning this case, Judge John  
2 F. Walter’s “judgment” is erroneous as a matter of law (see Plaintiff’s motion for  
3 reconsideration; Dkt. 40). Accordingly, Plaintiff Elijah Behringer is appealing the  
4 judgment and its related orders of the District Court to the U.S. Ninth Circuit Court of  
5 Appeals. Since this notice of appeal has been filed within 30 days of District Judge John F.  
6 Walter’s November 14<sup>th</sup> order disposing of the Plaintiff’s motion to reconsider the  
7 judgment, this notice is timely and in accordance with FRAP 4(a)(1)(A) and  
8 4(a)(4)(A)(4). “A timely filed motion for reconsideration under a local rule is a motion to  
9 alter or amend a judgment under Fed.R.Civ.P. 59(e).” *Bestran Corp. v. Eagle Comtronics,*  
10 *Inc.*, 720 F.2d 1019, 1019 (9th Cir. 1983). A timely motion for reconsideration “renders an  
11 otherwise final decision of a district court not final” for purposes of appeal. *Nutraceutical*  
12 *Corp. v. Lambert*, 139 S. Ct. 710, 717, 203 L. Ed. 2d 43 (2019). The appealed orders and  
13 judgment are interrelated. The docket entries (Dkt. 38, 39, and 43) as well as the Form 6  
14 representation statement are attached.

**DKT. 38**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ELIJAH BEHRINGER,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA POLYTECHNIC  
STATE UNIVERSITY, et al.,  
  
Defendants.

Case No. 5:23-CV-00934-JFW (SK)

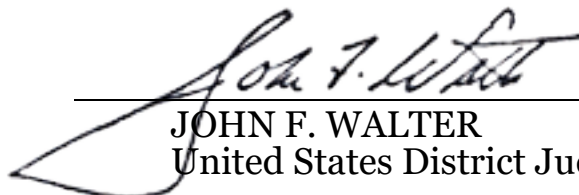
**ORDER ACCEPTING REPORT  
AND RECOMMENDATION TO  
GRANT DEFENDANTS'  
MOTIONS TO DISMISS**

In accordance with 28 U.S.C. § 636, the Court has reviewed the Report and Recommendation (R&R) to grant Defendants' Motions to Dismiss (ECF 34) and Plaintiff's Objections (ECF 35). *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). None of the Objections—to the limited extent that they are even intelligible—has any merit.

THEREFORE, the Court accepts the recommendation and orders that Defendants' Motions to Dismiss be GRANTED for the reasons stated in the R&R. Judgment will be entered accordingly dismissing the federal claims in the First Amended Complaint with prejudice and the state-law claims without prejudice.

IT IS SO ORDERED.

DATED: October 16, 2023

  
\_\_\_\_\_  
JOHN F. WALTER  
United States District Judge

DKT. 39

JS-6

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ELIJAH BEHRINGER,  
Plaintiff,

v.

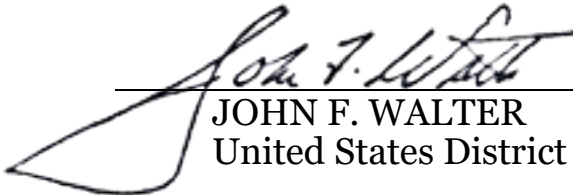
CALIFORNIA POLYTECHNIC  
STATE UNIVERSITY, et al.,  
Defendants.

Case No. 5:23-cv-00934-JFW (SK)

**JUDGMENT**

Pursuant to the Order Accepting Report and Recommendation to Grant Defendants' Motions to Dismiss, **IT IS ADJUDGED** that the federal claims in the First Amended Complaint are dismissed with prejudice and that the state-law claims are dismissed without prejudice.

DATED: October 16, 2023

  
\_\_\_\_\_  
JOHN F. WALTER  
United States District Judge

DKT. 43

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ELIJAH BEHRINGER,  
Plaintiff,

v.

CALIFORNIA POLYTECHNIC  
STATE UNIVERSITY, SAN LUIS  
OBISPO, et al.,  
Defendants.

Case No. 5:23-cv-00934-JFW (SK)

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION  
[ECF 40]**

Plaintiff Elijah Behringer moves for reconsideration of the Court's October 16, 2023 order and judgment dismissing his pro se complaint. Since his motion was brought within 28 days of the Court's entry of judgment, the Court construes it as a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e). So construed, the motion provides no basis for relief and is therefore DENIED.


Rule 59(e) motions are rarely granted "absent highly unusual circumstances." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). Because Rule 59(e) provides "an extraordinary remedy," it is "to be used sparingly in the interests of finality and conservation of judicial resources."

*Kaufmann v. Kijakazi*, 32 F.4th 843, 850 (9th Cir. 2022) (quotations omitted). Thus, relief under Rule 59(e) is available only when “the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quotations omitted); see C.D. Cal. L.R. 7-18. Plaintiff’s motion presents no newly discovered evidence or any intervening change in controlling law. He also has not shown any clear error in the Court’s judgment but simply repeats the same arguments that the Court has already rejected.

For all these reasons, Plaintiff’s motion for reconsideration is DENIED.<sup>1</sup> The hearing on the motion noticed for December 11, 2023 is VACATED. No further motions or requests for relief from judgment will be entertained, so the Clerk’s Office is instructed to reject any future filings in this closed case without need for additional court order.

IT IS SO ORDERED.

DATED: November 14, 2023



JOHN F. WALTER  
United States District Judge

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<sup>1</sup> The result would be no different under Federal Rule of Civil Procedure 60. Like Rule 59(e), “Rule 60(b) provides for extraordinary relief and may be invoked only upon a showing of exceptional circumstances.” *Engleson v. Burlington N. R. Co.*, 972 F.2d 1038, 1044 (9th Cir. 1992) (cleaned up); see *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005) (reiterating that final judgment may be reopened under Rule 60(b) for “extraordinary circumstances” only).

1 UNITED STATES COURT OF APPEALS  
2 FOR THE NINTH CIRCUIT

3 FORM 6 - REPRESENTATION STATEMENT

4 (Pursuant to Ninth Circuit Rule of Appellate Procedure 3-2)

5 APPELLANTS

6 *Name of Appellant:*

- 7 • **Elijah Behringer**

8 *Contact Information of Appellant*

9 **Elijah Behringer**

10 PO Box 2973

11 Crestline, CA 92325

12 (909) 222-5370

13 Registered for Electronic Filing in the 9th Circuit? Yes ( ) No (X )

14 APPELLEES

15 *Names of Appellees:*

- 16 • **Board of Trustees of**  
17 **the California State University**, (sued erroneously as **California Polytechnic State**  
18 **University,**  
19 **San Luis Obispo**);

20 Cal Poly President **Jeffrey Armstrong**,  
21 in his official and individual capacity;

22 Cal Poly Administrator **Tina Hadaway-**  
23 **Mellis**, in her official and individual  
24 capacity;

25 Cal Poly Administrator **Valla Hardy**, in  
26 her official and individual capacity;

27 Cal Poly Administrator **Amy Gode**, in  
28 her official and individual capacity;

The **County of San Luis Obispo** (sued erroneously as **San Luis Obispo County**);

1 County Health Officer **Penny**  
2 **Borenstein**, in her official and individual  
3 capacity;

4 ***Names/Contact Information of Appellees' Counsel:***

5 Warrington S. Parker III (SBN 148003)  
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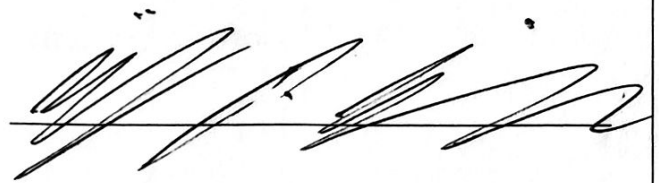
19 Attorneys for Defendants Board of Trustees of  
20 the California State University (erroneously  
21 sued as "California Polytechnic State  
22 University, San Luis Obispo"); Jeffrey  
23 Armstrong; Tina Hadaway-Mellis; Valla  
24 Hardy; and Amy Gode

25 Douglas C. Smith, Esq. (SBN 160013)  
26 John R. Byerly, Esq. (SBN 340021)  
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dsmith@smitlaw.com  
jbyerly@smitlaw.com

Attorneys for Defendants  
COUNTY OF SAN LUIS OBISPO and PENNY BORENSTEIN

1 Dated: 12/13/2023  
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I, Elijah Behringer, being duly sworn, do state and affirm according to law, that I have first-hand knowledge of the undisputed material facts and am competent to testify in these matters, and swear under penalty of perjury that these facts are true and correct.



Elijah J. Behringer

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Crestline, CA 92325  
(909) 222-5370

**PROOF OF SERVICE**

I, Elijah Behringer, declare and state:

I am over the age of 18 years old and a resident of San Bernardino County. My mailing address is PO Box 2973, Crestline, CA 92325.

I have served a copy of this notice by electronic service to:

**Uri Niv**  
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515 South Flower Street 40th Floor  
Los Angeles, CA 90071  
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jbyerly@smitlaw.com

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12/13/2023



Elijah J. Behringer